135-461

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 999 ~~886~~ ~~845~~ 81

THE COUNTY OF UPSHUR, WEST VIRGINIA,
APPELLANT,

vs.

BENJAMIN RICH, WILLIAM F. REYNOLDS, AND
GEORGE W. JACKSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED SEPTEMBER 18, 1886.

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vs.

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DETWEILER, PRINTERS, WASHINGTON.

1 At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg in said district, on the 12th day of January, A. D. 1884, the following order was made and entered of record, to wit:

BENJAMIN RICH and Others *vs.* THE COUNTY OF UPSHUR.

This day came Caleb Boggess, Esquire, counsel for Benjamin Rich and others, the plaintiffs in this cause, and presented an authenticated transcript of the record in this cause from the county court of Upshur county, and moved the court to docket the same in this court for further proceedings to be had therein, which is accordingly now done.

The transcript of record above referred to is in words and figures following, to wit:

Record.

THE STATE OF WEST VIRGINIA:

At a county court held for Upshur county, at the court-house thereof, on Monday, July 2d, 1883.

Benjamin Rich and others this day made application for relief against an erroneous assessment on 100,000 acres of land in Union district for the year 1883, and it appearing that the prosecuting attorney has had legal notice of such application, on motion of parties, by their attorneys, said application is here now docketed and continued.

Notice to prosecuting attorney is in words and figures fol-
2 lowing, viz:

You will take notice that we will apply to the county court of Upshur county, on the first day of the next term thereof, for relief against an erroneous assessment in Union district of said county against us of one hundred thousand acres of land for the year 1883, wherein the said tract is assessed too high against us, and also to reduce the quantity charged.

Yours, &c.,

BENJAMIN RICH,
W. F. REYNOLDS,
GEORGE W. JACKSON,
By Counsel.

April 16th, 1883.

And at another day, to wit, at a county court held for said county, at the court-house thereof, on Wednesday, August 22d, 1883.

BENJAMIN RICH and Others *vs.* UPSHUR COUNTY.

On a motion for the reduction of assessment value & reduction of quantity of 100,000 acres of land.

This day came again the plaintiffs, by their attorney, as well as the prosecuting attorney, on behalf of the State and county, and, on motion of the plaintiffs, this action is continued at their costs.

And on another day, to wit, at a county court held for said county, at the court-house thereof, on Tuesday, November 6th, 1883.

Benjamin Rich, Wm. F. Reynolds, and George W. Jackson, upon an application to correct an erroneous assessment of real estate in said county and to reduce and abate the quantity assessed.

This day came again the said applicants and presented
3 their petition setting forth their claim in this cause, which on their motion is by the court ordered to be filed.

Petition of applicants is in words and figures following, to wit:

To the honorable the county court of the county of Upshur, in the State of West Virginia:

The petition of Benjamin Rich, Wm. F. Reynolds, and George W. Jackson respectfully shows unto your honors that your petitioners are the owners in fee-simple of a certain tract of land lying partly in said county of Upshur and in the adjoining counties of Randolph and Braxton, but mostly in Upshur county, the exterior boundaries of which tract are said to contain 100,000 acres; that said tract of land has been charged and assessed on the land books of the proper district of the said county of Upshur for taxation for the year 1883 as containing 100,000 acres, whereas there are various parcels of land lying within said exterior boundaries which are properly to be deducted from the area therein, and thereby reduce the quantity to be charged to your petitioners for taxation.

And your petitioners further show that the assessment of said tract of land on said land books is at a valuation of $40,000, which they charge is unjust, extravagant, excessive, and illegal, and, as compared with the valuation of lands of like character in said county, wild and unimproved, the said valuation of said tract of 100,000 acres is grossly above and beyond that of adjacent lands.

Your petitioners therefore pray that the State of West Virginia and the county of Upshur may be made parties defendant to
4 this their petition, and that the said erroneous and illegal assessment be corrected and the quantity charged them, as aforesaid, reduced; and they will ever pray, &c.

B. RICH,
WM. F. REYNOLDS,
GEORGE W. JACKSON,
By Counsel.

JOHN S. FISHER,
G. D. CAMDEN,
JOHN A. HUTCHISON,
Attorneys for Petitioners.

And on the same day, to wit, Nov'r 6th, 1883.

Benjamin F. Rich, George W. Jackson, & Wm. F. Reynolds, upon an application to correct certain erroneous assessments of real estate in the county of Upshur, and upon a petition to remove the application into the circuit court of the United States for the district of West Virginia.

This day the said Benjamin Rich, Wm. F. Reynolds, & George

W. Jackson, by their attorneys, G. D. Camden, John A. Hutchinson, & John S. Fisher, presented their certain petition, praying the removal of the said application into the circuit court of the United States for the district of West Virginia, and also presented to the court with said petition the affidavit of Benjamin Rich and of said plaintiffs, made and certified according to law, as required by the act of Congress in such cases made and provided, and also the bond of said Rich, with John R. Boggess and G. D. Camden as securities in the penal sum of $500, conditioned according to law, as prescribed by the act of Congress, and moved the court to accept the bond as good and sufficient, and to proceed no farther in said cause, and to remove said application into the circuit court of the United
5 States for the district of West Virginia, pursuant to the act of Congress in such cases.

And thereupon the prosecuting attorney and A. M. Poundstone, representing the interest of the State and county, having seen and inspected the said petition, affidavit, and bond, and the said petitioners being citizens of the State of Pennsylvania, alleged, and finding said bond to be good and sufficient, and the amount in controversy exceeds the value of $500, nevertheless it is ordered by the court that said bond be, and the same is, accepted as good and sufficient, and doth order that said application be, and the same is, not removed in the said circuit court of the United States for the district of West Virginia aforesaid; to which ruling of the court the said applicants except and pray the court to sign, seal, and save to them said bill of exceptions, which is accordingly done, and the court doth certify that on the hearing of this petition and motion — the affidavit and bond in the words and figures following, to wit:

Petition for Removal to the Circuit Court of the United States for the District of West Virginia.

In the County Court of Upshur County, in the State of West Virginia.

BENJAMIN RICH, W. F. REYNOLDS, and GEORGE W. JACKSON

vs.

THE STATE OF WEST VIRGINIA & THE COUNTY OF UPSHUR.

Upon an application to correct an erroneous assessment of real estate.

To the county court of the county of Upshur:

6 Your petitioners, Benjamin Rich, Wm. F. Reynolds, and George W. Jackson, respectfully show to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of $500.

That the controversy in said suit is between citizens of different States, and that the petitioners were, at the time of the commencement of the said suit, and still are, citizens of the State of Pennsylvania, and that the said State of West Virginia and the said County of Upshur, in said State, a body corporate and politic under the con-

stitution and laws of West Virginia, are parties to said controversy under and by virtue of the statutes of the said State of West Virginia governing and regulating the assessment and reassessment of real estate for the purpose of taxation.

That the said suit and proceeding was commenced by your petitioner for the purpose of obtaining a correction of certain erroneous reassessments of real estate belonging to your petitioners, situate in the said county of Upshur, and an abatement from the valuation placed on the said real estate by the commissioners appointed under the statutes of the State of West Virginia respecting the reassessment of said lands in said county. Your petitioners further represent that this suit has not been tried, but is now pending for trial in the said county court for the said county of Upshur, held in the said State of West Virginia, and that your petitioners desire to remove the same into the circuit court of the United States for the district of West Virginia, in pursuance of the act of Congress in such case made and provided.

7 Your petitioners further show that they have filed the affidavit required by the statute in such cases made and provided, and offer herewith their bond executed by said Benjamin Rich as principal and John R. Boggess and Gideon D. Camden as his sureties, in the penal sum of $500, conditioned as by the said act of Congress is required.

Your petitioners therefore pray that said bond be accepted as good and sufficient according to the said act of Congress, and that said suit may be removed into said circuit court of the United States for the district of West Virginia, pursuant to said act of Congress, and that no further proceedings may be had therein in this court; and your petitioners will ever pray, &c.

BENJ. RICH.
WM. F. REYNOLDS.
GEORGE W. JACKSON.
By their counsel, C. D. CAMDEN &
JOHN A. HUTCHINSON.

Application for the Correction of Erroneous Assessment of Real Estate.

In the County Court of Upshur County, in the State of West Virginia.

BENJAMIN RICH, GEORGE W. JACKSON, and WM. F. REYNOLDS
vs.
THE STATE OF WEST VIRGINIA.

Affidavit.

STATE OF WEST VIRGINIA, }
County of Wood, } *To wit:*

I, Benjamin Rich, being duly sworn, do say that I am one
8 of the petitioners in the above-entitled cause; that I have reason to believe, and do believe, that from prejudice and local

influence petitioners will not be able to obtain justice in said State court.

BENJAMIN RICH.

Subscribed by the said Benjamin Rich in my presence and by him sworn to before me at my county aforesaid this October 19th, 1883.

Given under my hand and notarial seal the date above written.

[SEAL.] J. W. VANDERVORT,
Notary Public for Wood County, W. Va.

Bond.

Know all men by these presents that we, Benjamin Rich, as principal, and Gideon D. Camden and John R. Boggess, as sureties, are held and firmly bound unto the State of West Virginia in the penal sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, &c.

Sealed with our seals and dated this 31st day of October, 1883.

The condition of the above obligation is such that whereas Benjamin Rich, William F. Reynolds, & George W. Jackson, citizens of the State of Pennsylvania, have filed their petition in the county court of the county of Upshur, in the State of West Virginia, to remove from the said county court a suit for the correction of certain erroneous assessments, &c., pending and untried in the said county court, in the name of the said Benjamin Rich, William F. Reynolds, & Geo. W. Jackson against the State of West Virginia and County of Upshur, for the purpose of being relieved from certain erroneous assessments of taxes and correction of the same on lands of the said plaintiffs and for removal of said suit into the circuit court of the United States for the district of the State of West Virginia:

9 Now, if the said Benjamin Rich, William F. Reynolds, & George W. Jackson shall enter into the said circuit court of the United States for the district of West Virginia on the first day of its next session "copies of the process in the said cause, and all proceedings—depositions, testimony, and other proceedings—in the cause, then the above obligation to be void, else to remain in full force and virtue."

BENJAMIN RICH. [SEAL.]
JOHN R. BOGGESS. [SEAL.]
G. D. CAMDEN. [SEAL.]

Were referred to, read, and made a part of the record herein.

THE STATE OF WEST VIRGINIA, }
County of Upshur, } *ss:*

I, C. C. F. McWhorter, clerk of the county court in and for the county and State aforesaid, do certify that the foregoing is a true and complete transcript and copy from the record of my said court in the application or action aforesaid.

In testimony whereof I hereunto set my hand and fix the official seal of my court aforesaid this 7th day of Nov., 1883.

[SEAL.] C. C. F. McWHORTER,
Clerk Upshur County Court.

Costs of transcript:
Clerk's fees for copy of record, tax on seal, &c.------$4 00

Paid by Benjamin Rich.
(Signed) C. C. F. McWHORTER, *Clerk.*

10 And on another day, to wit, on the 27th day of February, 1884, the following order was made and a writ entered:

BENJAMIN RICH *et als.*
vs.
THE STATE OF WEST VIRGINIA and THE COUNTY OF UPSHUR.

Upon a petition.

This day came the County of Upshur, by its attorneys, A. M. Poundstone and John Brannon, Esquires, and moved the court to dismiss the proceedings in this cause and remand it to the county court of Upshur county, from whence it came, for want of jurisdiction. And the court not being advised of its judgment in the premises takes time to consider thereof, and thereupon the County of Upshur, by its said attorneys, tendered its plea in writing, marked No. 1, to the filing of which plea the plaintiffs, by their counsel, objected, and the matters of law arising thereon the court takes time to consider thereof.

Plea No. 1 is in words and figures following, to wit:

Plea.

BENJAMIN RICH, WILLIAM F. REYNOLDS, & GEORGE W. JACKSON
vs.
THE COUNTY OF UPSHUR, &C.

And the county court of the County of Upshur, in the State of West Virginia, and within the district of West Virginia, by O. B. Louden, president of said county court, and B. F. Armstrong, a member thereof, both being under the constitution of said State styled and called "commissioners," and they, constituting and composing a majority and quorum of said county court, for and on behalf thereof and in their persons, come and say that this
11 court ought not to have or take further cognizance of the proceedings aforesaid, because they say the matter of the application of the said Benjamin Rich, William F. Reynolds, and Geo. W. Jackson to the said county court for relief from and for the correction of alleged erroneous assessments of taxes on 100,000 acres of land, in said application and proceedings mentioned, to said county court, is not a suit, and does not involve a controversy, between a citizen of the State of West Virginia and a citizen of any other State

of the United States, and because in the said matter of said application the assessment of taxes on said 100,000 acres of land, for and on behalf of the State of West Virginia, to which taxes the said county court nor said county of Upshur is not entitled to or — right to any part thereof; and the said county court, in respect to said assessment of taxes for and on behalf of said State, is but the disputed organ, under the law of the State of West Virginia, to act upon the matter of relief asked for in said application, and because they say that as to the assessment of taxes on said 100,000 acres of land the taxes thereon and on behalf of said county of Upshur belongs to the said county of Upshur, and in respect to the matter of relief asked by said application the said county court is only the disputed organ of said county, under the law of said State, to act thereon, and the said county is not a party, by process or otherwise, in the matter of said application, nor is the said State of West Virginia a party, by process or otherwise, thereto.

Wherefore the said county court prays judgment whether this court can or will take further cognizance of the application aforesaid.

THE COUNTY OF UPSHUR,
By A. M. POUNDSTONE & JNO. BRANNON,
Its Attorneys.

12 UNITED STATES OF AMERICA,
District of West Virginia:

O. B. Loudon, named in the foregoing plea, being duly sworn, says that the facts and obligations therein contained are true to the best of his knowledge and belief.

O. B. LOUDIN.

Taken, sworn to, and subscribed before me this 27th day of Feb., 1884.

L. B. DELLICKER, *Clerk.*

On another day, to wit, on the 3rd day of February, the following order was made and entered of record, to wit:

BENJAMIN RICH & Others, Pl't'ffs,
vs.
THE COUNTY OF UPSHUR.

Upon a proceeding relating to taxes on land.

This day came the parties, by their attorneys, and thereupon it is considered by the court that [the] motion heretofore entered herein to dismiss this proceeding and to remand the same to the county court of Upshur county be overruled; and it [is] further considered by the court that [the] motion heretofore entered herein to reject the plea in writing No. "1," heretofore tendered and offered to be filed by the defendant, be sustained.

13 On another day, to wit, on the 5th day February, the following order was made and entered of record, to wit:

BENJAMIN RICH, W. F. REYNOLDS, & GEORGE W. JACKSON
vs.
COUNTY OF UPSHUR.

Upon application to correct an erroneous assessment of lands in the county of Upshur, West Virginia, removed into this court December, 1883.

This cause having been regularly docketed in this court, this day came the said Benjamin Rich, Wm. F. Reynolds, and George W. Jackson, by their attorneys, and the said County of Upshur, in the State of West Virginia, by Messrs. John Brannon and A. M. Poundstone, who represent the County of Upshur and the prosecuting attorney for said county, and it appearing to the court that the application for correction of the assessment herein complained of was made within the time prescribed by law, to wit, on the 16th day of April, 1883, and that the prosecuting attorney had due notice thereof, and the court, having heard the evidence and seen and inspected the papers and records in the cause, and heard the arguments of counsel thereon, upon mature consideration, doth find that a certain tract of one hundred thousand acres of land in the county of Upshur, assessed upon the reassessment of lands book by Commissioner D. O. B. Hall, in the year 1882, for the first assessment district of said county, and charged in the names of Benj. Rich & others, and as of [the] value of four hundred thousand dollars ($400,000), including lands and buildings, is erroneous, both as to the quantity of land so charged and the value so assessed.

And the court is of opinion, from all the evidence and the facts and circumstances in the case, and doth order, that the said
14 owners of said land should be charged, for the purposes of taxation, upon the proper books of said county with a less quantity than one hundred thousand acres, to wit, with twenty-five thousand acres thereof only; and that the valuation of said lands, including buildings, should be reduced and abated from the rate of four dollars per acre, as assessed by said commissioner, Hall, to two dollars and twenty-five cents per acre.

And it is further ordered that said assessment of said lands be, and the same is hereby, corrected as herein made, so that said applicants shall be charged with 25,000 acres of land only, at the rate of two dollars and twenty-five cents per acre, as aforesaid.

And it further appearing to the court that the said applicants have not paid the taxes for the years 1883 and 1884, and that the said excesssive valuation is three hundred and sixty-seven thousand seven hundred and fifty dollars, it is further considered and ordered that said Benjamin Rich, Wm. F. Reynolds, and George W. Jackson be, and they are hereby, relieved from the payment of so much and such part of the taxes and levies extended for said years 1883 and 1884 as may and do exceed the amount of taxes and levies proper to be assessed upon said lands, as herein and hereby reduced in quantity and value.

And it is further ordered that copies of this order be certified by the clerk of this court to the county court of Upshur county, the sheriff of

said county, the assessor of the first district thereof, and the auditor of West Virginia; and it is further ordered that no costs be taxed for or against either party.

MEMO.— Upon trial of this proceeding the defendant tendered its bill of exceptions Nos. "1," "2," & "3" to rulings and decisions of the court, which are signed and sealed by the court and made a a part of the record hereof.

15 Bill of exceptions No. "1" is in words and figures following, to wit:

BENJAMIN RICH and Others *vs.* THE COUNTY OF UPSHUR.

Be it remembered that upon the trial in this proceeding the court overruled the motion of the defendant to dismiss the same and to remove the same to the county court of Upshur county; to which ruling of the court in overruling the said motion the defendant tenders this its bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record.

(Signed) J. J. JACKSON. [SEAL.]

Bill of exceptions No. "2" is in words and figures following, to wit:

BENJAMIN RICH & Others, Plaintiffs,
vs.
THE COUNTY OF UPSHUR.

Upon tax proceedings, &c., &c.

Be it remembered that in this proceeding the defendant, by its attorney, tendered and offered to file its plea in writing, marked "Plea No. 1," in the words and figures following:

"And the county court of," &c.

(Here insert the plea.)

And the plaintiffs moved the court to reject said plea in writing, which motion to reject said plea the court sustained, and said plea was rejected by the court; to which ruling and decision of the court the defendant excepts and tenders this its bill of exceptions, which is signed and sealed by the court and ordered to be made a part of the record.

(Signed) J. J. JACKSON. [SEAL.]

16 Bill of exceptions No. "3" is in words and figures following, to wit:

BENJAMIN RICH & Others *vs.* THE COUNTY OF UPSHUR.

Be it remembered that upon the trial of this proceeding there was evidence showing that the plaintiffs claimed a tract of land in the proceedings mentioned, which had been assessed by an authorized commissioner (under certain statutes of West Virginia passed [in] 1882 and 1883) at the rate of four dollars per acre, making a valuation of the tract of $400,000 or a basis for State, *State*, school, and county taxation, and that upon said valuation the taxes [were] unassessed for the years 1883 and 1884.

And there was evidence showing that the valuation made by said commissioner of said tract of 100,000 acres of land was in excess of its proper taxable value. There was no evidence showing any particular part of the land within the boundary of the said 100,000-acre survey, and — tract was disclaimed by the plaintiff, but there was evidence showing that prior grants and elder claims within the bounds of said survey of 100,000 acres, and excepted and reserved from it by the terms of the said grant for 100,000 acres itself, with such other portions of the land within the said grant that were barred by the operation of the statute of limitations, which reduced the quantity that would be held by the plaintiffs to about 25,000 acres, or less, and evidence showing that the parcels of land within said survey, which could be held or recovered by the plaintiffs, could not be designated and set apart without immense labor, time, and expense; and the plaintiffs only set up claim to so much of the land within the boundaries of their claim (their grant being
17 an inclusive survey) as could be recovered by them, and the applicants made no objection to being assessed with the land they could hold or recover, but objected to being taxed with that portion of the land within the said grant that they had no right or title to, by reason of the prior grants and the bar of the statute of limitations; and there was evidence showing that the lands so claimed under prior grants, &c., were duly assessed with taxes, and the government of the State is deriving revenue therefrom. There was evidence tending to show that the plaintiffs had claim to about 25,000 acres under their exclusive grant. And thereupon the court was of opinion and did decide that the plaintiffs ought to be properly charged with 25,000 acres for taxable purposes in said county of Upshur, and that the valuation of the land should be reduced from $4.00 per acre to two dollars and twenty-five cents an acre; to which opinion of the court and decision thereof the defendants except and tender this bill of exceptions, which is signed, sealed, and made a part of the record in the cause.

(Signed) J. J. JACKSON. [SEAL.]

BENJAMIN RICH & Others, Pl't'ffs, *vs.* THE COUNTY OF UPSHUR.

Upon an application to correct erroneous assessment of land in Upshur County.

The defendant, considering itself aggrieved by the order and judgment of the court, entered herein at this term of the court, prays that an appeal be allowed by it, and that a transcript of the record and proceedings, duly authenticated, may be sent to the Supreme Court of the United States, and the court certifies that the
18 amount in controversy herein exceeds five thousand dollars.

It is ordered that an appeal, as prayed for, be allowed and citation issued, but this order is not to take effect until bound in the penalty of one thousand [dollars], conditioned according to law, be executed and approved by one of the judges of this court.

And on another day, to wit, on the 20th day of February, A. D.

1886, an appeal bond was filled in words and figures following, to wit:

Know all men by these presents that the County of Upshur, in the State of West Virginia, and Levi Leonard, G. Austin Newlon, Abraham Carper, William Post, and B. F. Armstrong are held and firmly bound unto Benjamin Rich, William F. Reynolds, and George W. Jackson in the full and just sum of one thousand dollars, to be paid to the said Benjamin Rich, William F. Reynolds, and George E. Jackson, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be *paid*, the said County of Upshur binds itself, and the said Levi Leonard, G. Austin Newlon, Abraham Carper, William Post, and B. F. Armstrong bind themselves by these presents.

Sealed with the seal of said county and our seals this twelfth day of February, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately at a circuit court of the United States for the district of West Virginia, in a certain proceedings depending in said court between the said Benjamin Rich, William F. Reynolds,
19 and George W. Jackson, parties petitioners, and said Upshur County was defendant, and an order and judgment was rendered therein by said court against said county, and the said County of Upshur having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said order and judgment in the aforesaid proceedings, and a citation directed to the said Benjamin Rich, William F. Reynolds, and George W. Johnson, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said County of Upshur shall prosecute said appeal to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

UPSHUR COUNTY,
By O. B. LOUDIN, [SEAL.]
President of County Court.
LEVI LEONARD. [SEAL.]
C. AUSTIN NEWLON. [SEAL.]
ABRAM CARPER. [SEAL.]
WILLIAM POST. [SEAL.]
B. F. ARMSTRONG. [SEAL.]

Attest: C. C. F. McWHORTER,
Clerk County Court.

Approved:

J. J. JACKSON,
Dist. Ct. U. S., D. W. Va.

THE STATE OF WEST VIRGINIA:

At a special term of the county court held for Upshur county, held at the court-house thereof on Friday, February 12th, 1886.

Present: O. B. Loudin, president; Ashley Gould, and L. D. Casto, commissioners.

20 The county, by this court, deeming it proper that the appeal heretofore allowed in the case, lately pending in the circuit court of the United States, of Benjamin Rich and others against the County of Upshur, touching the matters of tax and taxation, should be perfected by giving the bond required, have solicited Levi Leonard, C. Austin Newlon, Abram Carper, William Post, and B. F. Armstrong to enter as surety—

It is, therefore, ordered and here undertaken for and on behalf of the county of Upshur that should the said sureties be hereafter made to pay on account of such suretyship that the county of Upshur is hereby declared to be liable to indemnify and save harmless the said sureties.

And the court here certifies that said sureties are citizens of said county and large owners of unincumbered real and personal estate, and their aggregate worth is probably of the value of one hundred dollars.

I, C. C. F. McWhorter, clerk of the county court of Upshur county, do certify that the foregoing is a true and complete copy of the order entered by my said court on said 12th day of February, 1886.

In witness whereof I hereunto set my hand and affix the seal of my said court this 12th day of February, 1886.

[SEAL.] C. C. F. McWHORTER,
Clerk Upshur County Court.

21 THE STATE OF WEST VIRGINIA:

At a special session of the county court of Upshur county, held at the court-house thereof on Saturday, October 10th, 1885—present, O. B. Loudin, president; Ashley Gould and L. D. Casto, commissioners—said session being called according to law for the purpose of executing an appeal bond on behalf of the county in the tax suit of Benjamin Rich and others against Upshur county.

Whereas, in a certain proceeding heretofore pending in this court in the matter of a petition of Benjamin Rich, William F. Reynolds, and George W. Jackson for alleged erroneous valuation and taxation of a tract of land of 100,000 acres charged on the land assessor's books of this county, — has been claimed to have been removed from this court without any order of this court to the circuit court of the United States at Parkersburg; and whereas the said circuit court took jurisdiction thereof, and by the order of said court the quantity of the land has been reduced without designation of any part of the tract of 100,000 acres to 25,000 acres, and the valuation thereof per acre reduced from $4.00 to $2.25; and whereas we are advised that proper exceptions to the ruling of said court have been taken to test the question of the power of said court over the questions involved in said proceedings; and whereas an appeal from said order and judgment of said court has been allowed upon bond in the penalty of $1,000 being given:

Now it is therefore ordered by the court that such bond be executed by and in behalf of this county, to be signed for the

22 county, with the seal of this court by the president, and countersigned by the clerk of this court, and that a duly certified copy of this order be appended to such bond.

STATE OF WEST VIRGINIA, *County of Upshur,* } *To wit:*

I, C. C. F. McWhorter, clerk of the county court of said county, do certify that the foregoing is a true and complete copy of the order entered of record by my court aforesaid on the 10th day of Oct., 1885, and that the foregoing is the original bond executed by my said court in accordance with the requirements of said order.

In testimony whereof I hereunto set my hand and affix the official seal of my said court this twelfth day of February, 1886.

[SEAL.] C. C. F. McWHORTER,
Clerk Upshur County Court, W. Va.

23 And on the 12th day of April, 1886, the following citation was issued, which is in words and figures following, to wit:

The United States of America to Benjamin Rich, Wm. F. Reynolds, and George W. Jackson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of West Virginia, wherein the County of Upshur, State of West Virginia, is plaintiff in appeal and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in appeal, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-six.

Teste: [SEAL.] L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

24 *Return.*

Executed the within citation on this 14th day of April, 1886, by delivering to John A. Hutchinson, counsel for the within-named defendants, a copy thereof at Parkersburg, Wood Co., West Va.

C. SEHON,
U. S. Marshal.
W. H. RAMP, *Deputy.*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings in the case of Benjamin Rich and others against the County of Upshur upon an ap-

plication to correct an erroneous assessment in the County of Upshur, West Virginia, now of record in my office.

In testimony whereof I hereunto set my hand and the seal of said court, at Parkersburg, in said district, this 14th day of April, A. D. 1886, and in the 110th year of the Independence of the United States of America.

[Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.]

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Endorsed on cover: West Virginia C. C. U. S. No. 999. The County of Upshur, West Virginia, appellant, *vs.* Benjamin Rich, William F. Reynolds, and George W. Jackson. Filed September 18, 1886.

FILED.
DEC 10 1886
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1886.

NO. 999.

THE COUNTY OF UPSHUR, WEST VIRGINIA,

Appellant,

vs.

BENJAMIN RICH, WILLIAM F. REYNOLDS AND GEORGE W. JACKSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF FOR APPELLANT.

ALFRED CALDWELL, COUNSEL.

WHEELING:
WEST VIRGINIA PRINTING CO., PRINTERS.
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Supreme Court of the United States.

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BRIEF FOR APPELLANT.

This brief is filed pursuant to the permission granted by this court in its order, made November 1, 1886, on the motion to advance the case, &c.

On Monday, July 2nd, 1883, after having given notice, according to law, to the prosecuting attorney of Upshur county, West Virginia, of their intention so to do, Benjamin Rich, William F. Reynolds and George W. Jackson made application to the county court of said county, for the correction of an alleged erroneous assessment on 100,000 acres of land in Union district of that county, for the year 1883. (Record, page 1.)

On the 6th of November, 1883, said Benjamin Rich, William F. Reynolds and George W. Jackson, who had been assessed on 100,000 acres of land in Upshur county, on the land assessment book for 1883, at a valuation of $400,000, filed their petition in writing in the county court of said county, praying such court to correct such assessment as erroneous and illegal, and to reduce the quantity of land charged to them, and praying further that the State of West Virginia and the County of Upshur might be made parties defendant to their petition. (Record, page 2.) On the same day they filed their petition in said county court, (with bond in the penalty of $500, conditioned according to law,) praying the removal of the said application from the county court of Upshur county to the circuit court of the United States

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for the district of West Virginia, on the alleged grounds that the application was a suit in which the matter in dispute exceeded, exclusive of costs, the sum or value of $500, and that the controversy was between citizens of different States, i. e., between the petitioners, citizens of Pennsylvania, and the State of West Virginia and the County of Upshur. (Record, pages 3 and 4.)

There was also filed in said county court, with such petition and bond, an affidavit of Benjamin Rich that he had reason to believe, and did believe, that from prejudice and local influence the petitioners would not be able to obtain justice in said county court. (Record, pages 4 and 5.) The county court refusing to permit the removal prayed for, the petitioners on January 12, A. D. 1884, filed an authenticated transcript of the record in the matter of said application and docketed the application in the said circuit court of the United States. (Record, page 1.) The county of Upshur moved the Federal court to remand the proceeding to said county court, (record, page 6,) but such motion was overruled (record, page 7,) and the circuit court of the United States, by an order, reduced the valuation of the lands from $4 to $2.25 per acre, and the quantity to 25,000 acres, and further, by its order, relieved the petitioners from the payment of so much and such part of the taxes and levies extended for the years 1883 and 1884, as exceed the amount of taxes and levies proper to be assessed on said lands as reduced by said circuit court in quantity and value. (Record, page 8.)

The Federal circuit court allowed an appeal from its last named order to this court. (Record, page 10.)

The statute of West Virginia, under which the proceedings in the county court of Upshur county, West Virginia, herein before mentioned were instituted, was an act passed, February 23, 1883. (See Acts of Legislature of West Virginia for 1883, chapter 72.) The portion thereof material to the consideration of this case is as follows:

"(7) Any person feeling himself aggrieved by the assessment of his real estate, made under provisions of this act, may, within one year after the

filing of a copy of such assessment with the clerk of the county court, apply, by himself or his agent, to the said court for redress, first giving reasonable notice in writing of his intention to the prosecuting attorney, and stating in such notice the character of the correction he desires. It shall be the duty of the prosecuting attorney, upon being so notified, to attend to the interests of the State, at the trial of such application. If, upon hearing the evidence offered, the county court shall be of opinion that there is error in the assessment complained of, or that the valuation fixed by the commissioners is excessive, the said court shall make such order correcting the said assessment as is just and proper; a copy of such orders shall be made and certified to the auditor by the clerk within twenty days after the entering of the same; such application shall have precedence of all other business before the court, but any order or judgment made upon such application shall show that the prosecuting attorney was present and defended the interests of the State; and in the event it shall be ascertained that the land has been erroneously assessed, and that the owner has paid such taxes, the court shall order that the excess shall be refunded to him; and if not so paid, he shall be relieved from such excess. But if by evidence presented to the court they are of the opinion that the reassessed value of any real estate in any of the several districts of their county is too low, it shall be their duty to increase the same as is just and proper, and have such certified orders made and sent to the auditor as above described. And if it shall be ascertained that the owner of such reassessed real estate has not paid taxes in accordance with such increased valuation as the court may determine, then the court shall order such deficit to be collected. But no costs shall be taxed for or against either party or the State."

The questions involved in the last named case are, (1) whether the proceedings in the county court of Upshur county constituted a "suit" between citizens of different states, when the State of West Virginia was a necessary and indispensable party to such proceedings; and (2), whether such proceedings, being authorized by a statute of the State for the purpose of correcting erroneous assessments, are a "suit" within the meaning of the act of Congress authorizing the removal of suits from the State to the Federal court.

SPECIFICATIONS OF ERROR.

1. The Circuit Court of the United States, for the district of West Virginia, erred in overruling the motion to remand the case to the State Court. (Record, page 7.)

2. It erred in rejecting the plea in writing tendered by the county of Upshur. (Record, pages 6 and 7.)

3. It erred in reducing the valuation of the land of the appellees from four dollars per acre to two dollars and twenty-five cents an acre; in changing the number of acres with which said appellees were charged from 100,000 acres to 25,000 acres, and in relieving by its decree or order the appellees from payment of part of the taxes and levies against them for 1883 and 1884. (Record, page 8.)

ARGUMENT.

THIS IS NOT A SUIT BETWEEN CITIZENS OF DIFFERENT STATES.

On the 28th day of February, 1882, the legislature of West Virginia passed an act entitled, "An act to provide for the re-assessment of the value of all real estate within this state." (Acts of West Virginia, 1882, chap. 32.)

The seventh section of this act provides for the manner of correcting erroneous assessments made by the commissioners in the several counties, appointed pursuant to the act.

On February 23, 1883, the legislature passed an act amending and re-enacting said seventh section so as to read as herein before set forth.

The amended section only differs from the original in two particulars, (1) in having the following therein which is not in the original section, viz.: "But if by evidence presented to the court they are of the opinion that the reassessed value of any real estate in any of the several districts of their county is too low, it shall be their duty to increase the same as is just and proper, and have such certified orders made and sent to the auditor as above described. And if it shall be ascertained that the owner of such reassessed real estate has not paid taxes in accordance with such increased valuation as the court may determine, then the court shall order such deficit to be collected;" (2), and in saying: "But no costs shall be taxed for or against *either party* or the state," while the original section reads: "But no costs shall be taxed for or against the applicant or the state."

It is immaterial in the consideration of this case whether

the proceedings under consideration were instituted under the said seventh section as originally enacted, or as amended and re-enacted in 1883. That they were instituted under the authority of this section is shown by the recitals of the petition for removal of the case, (record, pages 3 and 4,) which says:

"That the said suit and proceeding was commenced by your petitioner for the purpose of obtaining a correction of certain erroneous *re-assessments* of real estate belonging to your petitioners, situate in the said county of Upshur, and an abatement from the valuation placed on the said real estate by the commissioners appointed under the statutes of the State of West Virginia respecting the *re-assessment* of said lands, in said county."

The order or decree of the United States Circuit Court, (record, page 8,) also shows the assessment complained of is the *re-assessment* in 1882, made by Commissioner D. O. B. Hall.

Admitting, for the present, for the sake of argument, that this proceeding is a "suit," let us consider the provisions of the state statute.

We find that a notice is to be given the prosecuting attorney of the county, whose duty it is, "upon being so notified, *to attend to the interests of the State*, at the trial of such application." Not to attend to the interests of his county or any inferior municipal corporation, but to the interests of the State alone, as the protection of the State's interests in such matters must necessarily protect all lesser interests. Again, the statute requires that the "order or judgment made upon such application shall show that the prosecuting attorney was present and defended the interests of the State." And upon the subject of costs the State is again mentioned. A copy of the order made is to be certified to the auditor, meaning the auditor of the State of West Virginia, as he is the only official called "auditor" in the state.

This statute contemplates only one party opposing the applicant, i. e., the State of West Virginia. If the statutory proceeding is a "suit," then the State is necessarily a defend-

ant and the case is not removable. Stone vs. South Carolina, 117 U. S. 430.

That the appellees felt that the State of West Virginia was a necessary defendant is shown all through the printed record.

The order of continuance in the county court of Upshur county, (record, page 1,) says that the prosecuting attorney came "on behalf of the State and county."

In their petition or application to the county court the appellees "pray that the State of West Virginia and the County of Upshur may be made parties defendant to their petition." (Record, page 2.) On page 3 of the record we find the order shows the prosecuting attorney appearing for the *State* and county, the State named as a defendant in the the title of the petition for removal, and the same petition reciting that the controversy was between the petitioners, "citizens of the said State of Pennsylvania, and that the said State of West Virginia and the said county of Upshur, in said State, a body corporate and politic under the constitution and laws of West Virginia, are parties to said controversy," &c.

At the head of the affidavit of Rich, (record, pages 4 and 5,) the State of West Virginia is the only defendant named, and the bond for removal of the case says the suit is "in the name of the said Benjamin Rich, William F. Reynolds and George W. Jackson against the State of West Virginia and County of Upshur." (Record, page 5.)

The order in the United States Circuit Court on February 27, 1884, shows in its title that the State of West Virginia is a defendant. (Record, page 6.)

It is respectfully insisted that the State of West Virginia must be defendant in this proceeding and that fact prevented the proceeding from being a "suit" between citizens of different States, and prevented the United States Circuit Court from having any jurisdiction in this case.

THE PROCEEDINGS IN THIS CASE WERE NOT A "SUIT."

I have but little to urge upon this question in addition to

what has been said in the briefs in Nos. 1239 and 1240.

The character of such proceedings as these under consideration has been settled by the following cases decided by the Supreme Court of Appeals of West Virginia: Railway Co. vs. Board of Public Works, (28 W. Va., 264,) printed in the briefs filed in 1239 and 1240; McClure vs. Maitland, (24 W. Va., 561,) and Low vs. County Court, (27 W. Va., 785.)

These decisions establish that this case is not a "suit" within the meaning of the United States statutes.

The county court of Upshur County is a mere board for the superintendence and administration of the police and fiscal affairs of the county, in considering the application made by the appellees, and not a court of justice. No matter before such board could be removed into a Circuit Court of the United States. Fuller vs. County of Colfax, 14 Fed. Rep. 177.

By the constitution of 1872, the county courts in West Virginia were created as trial courts of record as well as police and fiscal boards. But this was changed by an amendment to the whole of the VIII Article, (which relates to the judicial department,) agreed to by the legislature on the 6th day of March, 1879, and ratified by a vote of the people on the second Tuesday in October, 1880. The constitution of West Virginia provides, since such ratification, in relation to county courts, as follows:

"22. There shall be in each county of the State a County Court, composed of three commissioners, and two of said commissioners shall be a quorum for the transaction of business. It shall hold four regular sessions in each year, as such times as may be fixed upon and entered of record by the said court. Provisions may be made by law for holding special sessions of said court.

"23. The commissioners shall be elected by the voters of the county, and hold their office for the term of six years, except, that at the first meeting of said commissioners they shall designate, by lot or otherwise, in such manner as they may determine, one of their number, who shall hold his office for the term of two years, one for four years and one for six years, so that one shall be elected every two years. But no two of said commissioners shall be elected from the same magisterial district. And if two or more persons residing in the same district shall receive the

greater number of votes cast at any election, then only the one of such persons receiving the highest number shall be declared elected, and the person living in another district, who shall receive the next highest number of votes shall be declared elected. Said commissioners shall annually elect one of their number as president, and each shall receive two dollars per day for his services in court, to be paid out of the county treasury.

"24. The County Courts, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties and the same shall be preserved therein, or otherwise disposed of, as now is, or may be, prescribed by law. They shall have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and in all matters relating to apprentices. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies:

Provided, That no license for the sale of intoxicating liquors in any incorporated city, town or village, shall be granted without the consent of the municipal authorities thereof, first had and obtained. They shall in all cases of contest, judge of the election, qualification and returns of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such courts may exercise such other powers and perform such other duties, not of a judicial nature, as may be prescribed by law. And provision may be made, under such regulations as may be prescribed by law, for the probate of wills, and for the appointment and qualification of personal representatives, guardians, committees and curators, during the recess of the regular sessions of the County Court. Such tribunals as have been heretofore established by the Legislature, under and by virtue of the thirty-fourth section of the eighth Article of the Constitution of one thousand eight hundred and seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act, as to police and fiscal matters, in lieu of the County Court created by this article, until otherwise provided by law. And, until otherwise provided by law, such clerk, as is mentioned in the twenty-sixth section of this article, shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes under the said article and section of the Constitution of one thousand eight hundred and seventy-two, or the clerk of said court or tribunal respectively, respecting the recording and preservation of deeds and other papers presented for record, matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators and the settlement of their accounts, and in all matters relating to apprentices.

"25. All actions, suits and proceedings not embraced in the next preceding section, pending in a County Court when this article takes effect, together with the records and papers pertaining thereto, as well as all records and papers pertaining to such actions, suits and proceedings as have already been disposed of by said courts, shall be transmitted to and filed with the clerk of the Circuit Court of the county in his office, to which office all process outstanding at the time this article goes into operation shall be returned; and said clerk shall have the same power and shall perform the same duties in relation to such records, papers and proceedings as were vested in and required of the clerk of the County Court, on the day before this article shall take effect. All such actions, suits and proceeding, so pending as aforesaid, shall be docketed, proceeded in, tried, heard and determined in all respects by the Circuit Court, as if said suits and proceedings had originated in said court."

(Constitution of West Virginia, Art. VIII.)

It will be observed that the only jurisdiction of a judicial nature, which county courts can exercise, is "in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators, and the settlement of their accounts, and in all matters relating to apprentices." (Con. W. Va., Art. VIII, sec. 24.)

In respect to the police and fiscal affairs of the counties the same section provides:

"They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies."

The county courts have jurisdiction of contested elections of their own members and of all county and district officers. And finally the constitution provides as follows:

"Such courts may exercise such other powers and perform such other duties, *not of a judicial nature*, as may be prescribed by law."

The county courts as police and fiscal boards have, by the constitution, the power "to levy and disburse the county levies." This is not a judicial power and does not embrace authority to correct erroneous assessments. The statute, authorizing them to correct assessments, was passed by virtue of the constitutional provision that other powers, *not of a judicial nature*, might be given them by law.

If the county court, in the proceedings to correct an erroneous assessment, exercises powers or performs duties *of a judicial nature*, then the act we have quoted, purporting to authorize it to do so, is plainly unconstitutional; and, if the act is unconstitutional, neither the county court, or *a fortiori* the United States Circuit Court, has any jurisdiction to entertain the proceedings.

If, however, the proceedings are not of *a judicial nature*, as the statute seems to clearly indicate they were not intended to be, because no costs are allowed and no appeal provided for, &c., then they do not constitute a "suit" within the meaning of the United States law, the county court is not sitting as a court of justice in considering them, and no removal of them from the county court to the United States circuit court can properly take place.

Of course, inasmuch as the taxes for state and county purposes are both levied on the same assessment, they are equally interested in the questions under consideration.

It is respectfully submitted that the decrees and orders of the circuit court of the United States for the district of West Virginia should be reversed and these proceedings remanded to the county court of Upshur county.

Alfred Caldwell, ~~ALFRED CALDWELL~~,
Attorney General of West Virginia, counsel for appellant.

Supreme Court of the United States.

OCTOBER TERM, 1886.

THE BALTIMORE AND OHIO RAILROAD COMPANY, *Plaintiff in Error or Appellant*, *vs.* JOSEPH S. MILLER, AUDITOR OF THE STATE OF WEST VIRGINIA, and others.	No. 1239.
THE BALTIMORE AND OHIO RAILROAD COMPANY, *Plaintiff in Error or Appellant*, *vs.* THE BOARD OF PUBLIC WORKS.	No. 1240.
THE COUNTY OF UPSHUR, WEST VIRGINIA, *Appellant*. *vs.* BENJAMIN RICH and others.	No. 999.

And now comes the defendants in error or appellees in the two causes first mentioned, by Alfred Caldwell their counsel, and move the court to advance said two causes, pursuant to the third subdivision of rule 32 of the court, because the matter involved in the two cases aforesaid is the right of the Baltimore and Ohio Railroad Company to remove from State courts, appeals from the assessment of certain of its property by the Board of Public Works of the State of West Virginia, for the year 1883, to the circuit court of the United States, for the District of West Virginia, on the ground that such appeals were suits of a civil nature pending in State courts between said

Company, which claims to be a corporation of the State of Maryland, and the defendants in error or appellees who are claimed by the Company to be all citizens of West Virginia, in which suits the matter in dispute, exceeds in value, exclusive of costs, the sum or value of five hundred dollars.

The said circuit court of the United States on the 23rd day of June, A. D. 1886, remanded the first named cause to the State court from which it was removed, and on the 24th day of June A. D. 1886, the same court remanded the second cause, allowing the Company writs of error and appeals to its orders remanding the two causes, under section 5 of the act of March 3, 1875. The defendants in error or appellees make the said motion to advance, under the third subdivision of the 32rd rule aforesaid, desiring to avail themselves of the right thereby conferred to have a speedy termination of the litigation.

And now also comes the County of Upshur, West Va., by Alfred Caldwell, its counsel, and moves the court to advance the third of the above entitled causes. In the last named cause on the 3d of November, 1883, Benjamin Rich and others, who had been assessed on 100,000 acres of land in Upshur county, on the land assessment book for 1883, at a valuation of $400,000, applied by petition to the county court of said county to correct such assessment as erroneous and illegal, and to reduce the quantity of land charged to them, praying that the State of West Virginia and the County of Upshur, might be made parties defendant to their petition, and on the same day filed their petition in said county court, with bond in the penalty of $500, conditioned according to law, praying the removal

of the said application from the county court of Upshur county to the circuit court of the United States for the district of West Virginia, on the alleged grounds that the application was a suit in which the matter in dispute exceeded, exclusive of costs, the sum or value of $500, and that the controversy was between citizens of different States *i. e.*, between the petitioners, citizens of Pennsylvania, and State of West Virginia and the County of Upshur.

There was also filed in said county court, with such petition and bond, an affidavit of Benjamin Rich that he had reason to believe, and did believe, that from prejudice and local influence the petitioners would not be able to obtain justice in said county court. The county court refusing to permit the removal prayed for, the petitioners on January 12, A. D. 1884, filed an authenticated transcript of the record in the matter of said application and docketed the application in the said circuit court of the United States. The county of Upshur moved the Federal court to remand the proceedings to said county court, but such motion was overruled and the circuit court of the United States by an order reduced the valuation of the lands from $4 to $2.25 per acre, and the quantity to 25,000 acres, and further by its order relieved the petitioners from the payment of so much and such part of the taxes and levies extended for the years 1883 and 1884, as exceed the amount of taxes and levies proper to be assessed on said lands as reduced by said circuit court in quantity and value.

The questions involved in the last-named cause are (1), whether the proceedings in the county court of Upshur county were a suit between citizens of different States, when the State of West Virginia was a necessary and in-

dispensable party to such proceedings; and (2), whether such proceedings, being authorized by a statute of the State for the purpose of correcting erroneous assessments, constitute a suit within the meaning of the removal acts of Congress. Although arising under different statutes of West Virginia, these same questions are substantially involved in all three of said cases, as the appellant in said third cause is advised. The motion to advance the last-named cause is made because the great change by the Federal court in the assessment of so large a tract of land has materially interfered with the operations of the county government of Upshur county, and the decision of the question of the power of the United States circuit court to correct an assessment for taxation in lieu of the local tribunals empowered by the State law, is one of vital importance involving the necessary revenue of the State and its power to administer its tax laws. The court is respectfully asked to permit the three cases aforesaid to be heard together.

The statute of West Virginia, under which the proceedings in the county court of Upshur county, West Virginia, mentioned in the foregoing motion were instituted, was an act passed, February 23 1883 (see Acts of the Legislature of West Virginia for 1883, chapter 72), the portion of which, material to be considered in the Upshur county case is as follows:

"(7) Any person feeling himself aggrieved by the assessment of his real estate, made under provisions of this act, may, within one year after the filing of a copy of such assessment with the clerk of the county court, apply, by himself or his agent, to the said court for redress, first

giving reasonable notice in writing of his intention to the prosecuting attorney, and stating in such notice the character of the correction he desires. It shall be the duty of the prosecuting attorney, upon being so notified, to attend to the interests of the State, at the trial of such application. If, upon hearing the evidence offered, the county court shall be of opinion that there is error in the assessment complained of, or that the valuation fixed by the commissioners is excessive, the said court shall make such order correcting the said assessment as is just and proper; a copy of such orders shall be made and certified to the auditor by the clerk within twenty days after the entering of the same; such application shall have precedence of all other business before the court, but any order or judgment made upon such application shall show that the prosecuting attorney was present and defended the interests of the State; and in the event it shall be ascertained that the land has been erroneously assessed, and that the owner has paid such taxes, the court shall order that the excess shall be refunded to him; and if not so paid, he shall be relieved from such excess. But if by evidence presented to the court they are of the opinion that the reassessed value of any real estate in any of the several districts of their county is too low, it shall be their duty to increase the same as is just and proper, and have such certified orders made and sent to the auditor as above described. And if it shall be ascertained that the owner of such reassessed real estate has not paid taxes in accordance with such increased valuation as the court may determine, then the court shall order such deficit to be collected. But no costs shall be taxed for or against either party or the State."

ALFRED CALDWELL,
Counsel as aforesaid.